

Appl.No.09/938,292

Response dated August 14, 2003

Reply to Office action of April 14, 2003

REMARKS

This application was filed with 14 claims. Claims 1-14 have been objected to. Claims 1 and 2 have been amended. Therefore, Claims 1-14 are pending in the Application. Reconsideration of the application based on the remaining claims as amended and arguments submitted below is respectfully requested.

Drawings

The Office Action states that the proposed substitute sheet of drawings filed on January 13, 2003 has been disapproved for introducing new matter. This proposed substitute sheet included new Figure 8 showing the bottom plan view of the inner surface 35 of the inner cap 30 and the inner surface 35 included the words "CAUTION NOT CHILD RESISTANT". The inner surface 35 as a part of the upper surface 60 of the inner cap 30 is shown in originally submitted Fig. 4 and described in various locations in the specification as originally submitted.

The Office Action continues and states that the drawings have been objected to because they do not show every feature of the invention specified in the claims. Namely, the Office Action requires the indicia of "CAUTION NOT CHILD RESISTANT". Specifically, Claim 13, as originally submitted, recites this feature.

Also, the Office Action states that the drawings have been objected to because they fail show the indicia of "CAUTION NOT CHILD RESISTANT" as described in

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the specification. Specifically, lines 1-6 on page 9, as originally submitted, describe these indicia.

Applicant would like to respectfully offer that Figure 8 as filed on January 13, 2003 is not new matter. Figure 8 simply illustrates the features of Claim 13 and the indicia of lines 1-6 on page 9 as originally submitted. Specifically, Claim 13, through its language and dependency on Claims 12, describes a "warning compris[ing] the words CAUTION NOT CHILD RESISTANT" wherein that warning is located on "the upper surface of the inner cap". Lines 1-3 on page 9 recite that "the upper surface 60 of the inner cap 30 has an inner surface 35... [and]...the inner surface 35 includes a warning, for example 'CAUTION NOT CHILD RESISTANT.'" Figure 8 shows the inner surface 35 of the inner cap 30 includes the warning "CAUTION NOT CHILD RESISTANT".

Also, Applicant would like to respectfully offer that the Office Action objects to the drawings for including matter that the Office Action and, in the very next two paragraphs, admits that the "CAUTION NOT CHILD RESISTANT" warning is in the specification and claims as filed. According to MPEP § 608.01, "[i]n establishing a disclosure, applicant may rely not only on the description and drawing as filed but also on the original claims if their content justifies it." Also, according to MPEP §2163.06 "...information contained in any one of the specification, claims or drawings of the application as filed may be added to any other part of the application without introducing new matter."

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Applicant would like to state that no new matter has been submitted and that the features of the claims and indicia described in the specification is illustrated in the Figures 1-8 as previously submitted. As such, Applicant respectfully requests that the objections to the drawings be reconsidered and withdrawn. Upon acceptance and allowance, formal drawings incorporating these changes will be submitted.

Claim Objections

Claim 1 was objected to due to informalities. Applicant has amended Claim 1 as requested by the Examiner. As such, Applicant respectfully requests that the objection to Claim 1 be withdrawn.

Claim Rejections - 35 U.S.C. § 112

Claims 1-14 were rejected under 35 U.S.C. § 112, second paragraph. Specifically, Claim 1 lacked proper antecedent basis and Claim 2 lacked proper 35 U.S.C. § 112, 6th paragraph, form. Applicant has amended both of these Claims as requested by the Examiner. As such, Applicant respectfully requests that the rejection of Claims 1-14 under § 112 be withdrawn.

Allowable Subject Matter

Applicant gratefully acknowledges that Claims 1-14 are allowable if rewritten to overcome the rejections 35 U.S.C. § 112, second paragraph and the non-statutory double patenting. Applicant has amended these Claims as requested by

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the Examiner and submitted a terminal disclaimer. As such, Applicant respectfully requests allowance of Claims 1-14.

Include herein is a Terminal Disclaimer in compliance with 37 C.F.R. § 1.321, and the applicable fee under 37 C.F.R. 1.20(d), filed to obviate the rejection under the judicially created doctrine of the obviousness-type double patenting.

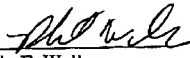
Applicant has commented on some of the distinctions between the cited references and the claims to facilitate a better understanding of the present invention. This discussion is not exhaustive of the facets of the invention, and Applicant hereby reserves the right to present additional distinctions as appropriate. Furthermore, while these remarks may employ shortened, more specific, or variant descriptions of some of the claim language, Applicant respectfully notes that these remarks are not to be used to create implied limitations in the claims and only the actual wording of the claims should be considered against these references.

Pursuant to 37 C.F.R. § 1.136(a), Applicant petitions the Commissioner to extend the time for responding to the April 14, 2003, Office Action for 1 month from July 14, 2003, to August 14, 2003. Applicant authorizes the Commissioner to withdraw the extension fee of \$55.00 from Deposit Account 23-0035.

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The Commissioner is authorized to charge any deficiency or credit any overpayment associated with the filing of this Response to Deposit Account 23-0035.

Respectfully submitted,


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